

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

SANDRA JANINE LA FLECHE,

No. 1:18-cv-00899-CL
ORDER

Plaintiff,

v.

STEVEN TURNER MNUCHIN c/o
Secretary of the Treasury, Office of
the Custodian of the Alien Property,

Defendant,

CITY OF MEDFORD,

Movant.

AIKEN, District Judge.

Magistrate Judge Mark Clarke filed his Findings and Recommendation ("F&R") (doc. 12) recommending that plaintiff's motions (docs. 8, 9 and 11) should be DENIED, the document at Doc. 10 should be SEALED, and plaintiff's Complaint (doc. 1) should be dismissed with leave to file an Amended Complaint within 30 days. This case is now before this Court. *See* 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

Plaintiff has filed objections (doc. 19) to the F&R, which the Court construes as timely. When either party objects to any portion of a magistrate judge's F&R, the

district court must make a *de novo* determination of that portion of the magistrate judge's report. *See* 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore Business Machines, Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert denied*, 455 U.S. 920 (1982).

Having reviewed the file of this case and Magistrate Judge Clarke's order, the Court finds no error. Though plaintiff has paid her filing fee, there is no error in Magistrate Judge Clarke's dismissing her complaint, without prejudice, pursuant to Fed. R. Civ. Pro. 12(b)(6). *See Wong v. Bell*, 642 F.2d 359, 361 (9th Cir. 1981) (A district court "may act on its own initiative to note the inadequacy of a complaint and dismiss it for failure to state a claim") Moreover, Judge Clarke has recommended that plaintiff be allowed time cure the deficiencies identified in the complaint.

The Court adopts Magistrate Judge Clarke's F&R (doc. 12) in its entirety. Accordingly, plaintiff's motion for hearing (doc. 8), motion for summary judgment (doc. 9), and demand for execution of operation of law (doc. 11) are DENIED. The documents contained in Doc. 10 are ordered SEALED. Finally, plaintiff's Complaint (doc. 1) is dismissed, without prejudice, for the reasons outlined in the F&R. Plaintiff is granted 30 days from the date of this order to file an Amended Complaint.


Subsequent to Magistrate Judge Clarke filing his F&R, plaintiff also filed a Notice of Removal of a Medford Municipal Court case (Case No. 19E05789) and moved to consolidate that case with the present action. (doc. 22) The municipal case involves a traffic citation issued to plaintiff in April of 2019. The City of Medford appeared in the case to move for remand of the traffic case. (doc. 23)

Federal courts are courts of limited Jurisdiction. Plaintiff alleges diversity of citizenship pursuant to 28 U.S.C. § 1332 as the basis for removal of the municipal case. However, there is no diversity jurisdiction here as plaintiff is a citizen of the State of Oregon and the City of Medford is a municipality also located in the state of Oregon. Moreover, the amount in controversy in the municipal case does not exceed the mandatory threshold of \$75,000. This Court also notes that, even if it did have jurisdiction for removal, plaintiff's motion to consolidate (doc. 22) would be denied as there are no common questions of law or fact between the two cases. See Fed. R. Civ. P. 42.

The City of Medford's motion to remand (doc. 23) is GRANTED. The Municipal Case (Case no. 19EO5789) removed in Doc. 22 is REMANDED to the Medford Municipal Court.

IT IS SO ORDERED.

Dated this 4th day of September 2019.



Ann Aiken
United States District Judge